

is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure. In the absence of an agreement in writing among all participants, this procedure may be applied by the Board, in its discretion, either on the motion of a party or by the Copyright Royalty Board *sua sponte*. A party requesting use of paper proceedings, in the absence of agreement among the other participants, should include in the motion a showing that the use of paper proceedings in the particular case would meet any due process or other legal requirements.

(2) *Course of procedure.* Paper proceedings will be decided on the basis of the filing of the written direct statement by the participant (or participant group filing a joint petition), the response by any opposing participant, and one optional reply by a participant who has filed a written direct statement. Before a decision becomes final in a case utilizing paper proceedings, the Copyright Royalty Board will offer the participants the opportunity to comment on the decision.

§ 351.4 Written direct statements.

(a) *Required filing; deadline.* All parties who have filed a petition to participate in the hearing must file a written direct statement. The deadline for the filing of the written direct statement will be specified by the Copyright Royalty Board, not earlier than 4 months, nor later than 5 months, after the end of the voluntary negotiation period set forth in § 351.2.

(b) *Content required.* (1) *Testimony.* The written direct statement shall include all testimony, including each witness's background and qualifications, along with all the exhibits to be presented in the direct statement.

(2) *Designated testimony.* Each participating party may designate a portion of past records, including records of the Copyright Royalty Tribunal or Copyright Arbitration Royalty Panels, that it wants included in its direct statement. If a party intends to rely on any part of the testimony of a witness in a prior proceeding, the complete testimony of that witness (*i.e.*, direct, cross and redirect examination) must be des-

ignated. The party submitting such designated testimony shall include a copy of that testimony with the written direct statement.

(3) *Claim.* In the case of a royalty distribution proceeding, each party must state in the written direct statement its percentage or dollar claim to the fund. In the case of a rate (or rates) proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to, and including, the filing of the proposed findings of fact and conclusions of law.

(4) *Material questions.* Under a separate heading, the written direct statement shall set forth any "material question of substantive law" that is expected to arise in the course of the proceeding and might warrant certification to the Register of Copyrights under 17 U.S.C. 802(f). Cf., 37 CFR Part 354.

(c) *Amended written direct statements.* A participant in a proceeding may amend a written direct statement based on new information received during the discovery process, within 15 days after the end of the discovery period. An amended written direct statement must explain how it differs from the written direct statement it will amend and must demonstrate that the amendment is based on new information received during the discovery process. The participant amending its written direct statement may file either the amended portions of the written direct statement or submit complete new copies at its option.

§ 351.5 Discovery in royalty rate proceedings.

(a) *Schedule.* Following the submission to the Copyright Royalty Board of written direct statements by the participants in a royalty rate proceeding, and after conferring with the participants, the Copyright Royalty Board will issue a discovery schedule. Discovery shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Board in connection with the resolution of motions, orders, and disputes pending at the end of such period. The discovery schedule will include a date for the